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HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE 1167th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 July 1992, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.25 p.m.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 6)

1. The CHAIRMAN said that, since the Preparatory Committee had not succeeded, at its first and second sessions, in agreeing on the agenda for the World Conference and would not be meeting again until September, it would clearly not be possible for the Human Rights Committee to take a decision at the current session on what form its participation should take or what statements or papers it might wish to submit. He therefore proposed that consideration of the item should be postponed until the next session.

2. It was so decided.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3)

3. The CHAIRMAN drew attention to a working paper without a symbol that had been prepared by the Secretariat, showing the status of reports received and outstanding. It would be seen that the number of reports pending consideration had increased substantially since the Committee's preceding session, six further reports having come to hand. The Committee would therefore have to try to complete consideration of as many reports as possible at its next session. The Bureau suggested the following list: the second periodic report of Guinea; the initial report of the Niger; the second periodic reports of the United Republic of Tanzania, Luxembourg, Venezuela and the Islamic Republic of Iran; and the initial report of Burundi, postponed from the current session. It might be thought that seven reports was too many, but it might be possible to consider at least one in less time than was usually allocated; for example, the Luxembourg report might well require only two meetings. Again, it was by no means certain that delegations from Burundi and the Niger would be present to introduce their reports and discuss them with the Committee - both States had in fact previously requested postponements. The Committee might schedule the report of the Niger, for example, for consideration and notify the Government that, even if its delegation failed to attend, the report would be considered by the Committee.

4. Mrs. HIGGINS said she was reluctant to tell States that the Committee might consider their reports in the absence of a delegation as there were, she feared, many States that would welcome the possibility of avoiding an appearance before the Committee. As far as the Luxembourg report was concerned, she thought it likely that if three meetings, with a possible reduction to two, were scheduled for its consideration, the Committee would in the end use all three. On the other hand, if fewer meetings were scheduled for European countries, it might give the unfortunate impression that their human rights records were being less closely scrutinized than those of other countries.

5. Mrs. KLEIN (Secretary of the Committee), replying to a question by Mr. EL SHAFEI, said that, to the best of her recollection, the Luxembourg report was of about average length - 25-30 pages.

6. Mr. NDIAYE pointed out that, as Guinea had no Permanent Mission in Geneva, it would be more convenient to schedule consideration of its report for the forty-seventh session, to be held in New York.

7. The CHAIRMAN, agreeing, asked whether any member of the Committee wished to suggest a replacement for Guinea, if it were desired to keep seven countries on the list.

8. Mr. ANDO suggested that, if seven were needed, Egypt might be the most appropriate candidate, as its report had been due in 1988.

9. Mr. PRADO VALLEJO said that, bearing in mind that consideration of the reports of some countries might take more than three meetings, seven seemed to him to be too many to schedule. Six was more than enough; the Committee had never previously scheduled more than five.

10. Miss CHANET suggested that the Committee should keep a report in reserve in case one or other of the reporting countries concerned failed to attend the next session. The reports of the Niger and the United Republic of Tanzania were short, and the Luxembourg report was not very lengthy either: they might well be considered in less than the usual number of meetings. In view of the considerable backlog that had built up, it would be most unfortunate if the Committee were in the end unable to consider at least six reports.

11. The CHAIRMAN wondered whether a third periodic report, consideration of which could normally be expected to take fewer meetings, might be included in the list, perhaps that of Senegal or Hungary.

12. Mrs. HIGGINS welcomed that suggestion, but doubted whether an Eastern European country would be suitable because of the many changes that had occurred and were continuing in that area. There were points in favour of either Senegal or Egypt as far as a reserve report was concerned. To have a main list of six plus one report in reserve would be about right, whereas seven plus a reserve would probably be unmanageable.

13. Mr. NDIAYE thought that Senegal, which would be certain to send a delegation to appear before the Committee, might well replace the Niger in the list.

14. The CHAIRMAN said that the Niger had in fact asked to come before the Committee in November, which made it difficult to say that the Committee would not be ready to receive it. The problem remained that, if one or two of the countries mentioned withdrew at the last moment as at the current session, there was a risk that the number of reports to be considered might again fall to four, which was too few. A particular difficulty was that inability to attend was sometimes notified at a very late stage.

15. Mrs. KLEIN (Secretary of the Committee) confirmed that the note verbale from Burundi indicating that it was unfortunately impossible to send a delegation to the current session but that one would be ready to attend the next session had not been sent until 26 June, which of course had been too late to enable another country's report to be scheduled. The same problem of lateness had arisen with the Niger.

16. The CHAIRMAN commented that it appeared to be necessary to keep both Burundi and the Niger on the list.

17. Mr. PRADO VALLEJO suggested that Uruguay might be placed on the list, which should not however exceed six countries.

18. The CHAIRMAN reiterated that, if it were decided to list seven countries, he would favour the seventh being a country submitting a third periodic report, for example Senegal.

19. Mr. EL SHAFEI said that to delay consideration of reports unduly once they had been submitted would discourage State parties from trying to achieve timely reporting. Reports left unconsidered also became out of date. It should be possible, by looking at the reports received, to make a rough calculation of how many meetings would be required for their consideration. He doubted whether the Committee would need to spend more than 16 of its allocation of 30 meetings for the next session on consideration of State party reports. In view of the backlog that had built up, it was essential to expedite consideration as far as possible.

20. The CHAIRMAN agreed with Mr. El Shafei. Where consideration of reports was delayed, much time in meetings had to be taken in updating them, as had occurred with the Belarus and Mongolia reports. On the other hand, consideration of the Senegal report would be unlikely to take more than two meetings.

21. Mrs. HIGGINS thought that a seventh country should be added only because there were serious doubts as to whether one or two of the States on the proposed list would actually send a delegation; she would not wish seven to become the norm. She thought that Mr. El Shafei's estimate of a maximum of 16 meetings for consideration of reports would prove excessively sanguine.

22. The CHAIRMAN asked whether the Committee was willing to schedule a main list of seven reports (Senegal, the Niger, the United Republic of Tanzania, Luxembourg, Venezuela, the Islamic Republic of Iran and Burundi), with the report of Egypt being held in reserve.

23. It was so decided.

24. The CHAIRMAN drew attention to the problem posed when States parties submitting second periodic reports that were long overdue asked for such reports to be considered as the second and third periodic reports taken together. He would suggest that for the moment, instead of entering into a discussion on the matter, the Committee should content itself with confirming its recent practice, namely, to consider second periodic reports solely as such, but to reserve the right to adjust, as it saw fit and in the light of such consideration, the date when the subsequent report would be due.

25. It was so decided.

26. The CHAIRMAN then drew attention to the problem of substantial and continuing delays in the submission of reports. As a matter of information, he said that the Committee on the Elimination of Racial Discrimination (CERD) had decided that, when a second or later report was long overdue, the State party concerned should be advised that in the case of further delay, the preceding report would be scheduled for reconsideration in the light of information that had come into the Committee's possession.

27. In the Bureau's view, another course of action might be to address formally to the Secretary-General of the United Nations the list of overdue reports, with a request that he should place the matter on the agenda of the next meeting of States parties: in the present instance, that would be the meeting scheduled for September 1992.

28. Mr. PRADO VALLEJO, supported by Mr. HERNDL, endorsed the second alternative: some reports were intolerably overdue; perhaps, if the suggested measure failed to produce results, the matter should be set before the General Assembly.

29. Mrs. HIGGINS, also endorsing that alternative, added that the meeting of States parties could be asked to consider, in the context of elections, the appropriateness of nominations to the Committee from countries whose reports were long overdue. As to the course of action adopted by CERD, she feared that it might be welcomed with open arms by certain recalcitrant States.

30. Mr. HERNDL said he presumed that the communication to the Secretary-General would contain such details as the names of the States involved.

31. Miss CHANET, suggesting that the Committee might wish to see the text of such a communication before it was dispatched, cautioned against the establishment of a direct link between delays in reporting and elections to the Committee: that could be a source of embarrassment to certain candidates.

32. In reply to a question by Mrs. HIGGINS, the CHAIRMAN confirmed that the practice of identifying badly overdue States as prominently as possible in the Committee's annual report would also be continued.

33. If the Committee agreed, the Secretariat would draft and submit for its approval a communication to the Secretary-General of the United Nations along the lines suggested.

34. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Letter from the Chargé d'Affaires of the Democratic People's Republic of Korea

35. The CHAIRMAN informed the Committee that, in the course of the consideration of the initial report of the Republic of Korea (CCPR/C/68/Add.1), he had received a letter from the Chargé d'Affaires of the Democratic People's Republic of Korea complaining about certain statements

relating to his country in that report and requesting that the letter should be circulated to members of the Committee. He wished to state for the record that the request had been duly complied with.

36. Mr. HERNDL, supported by Mr. MYULLERSON and Mrs. HIGGINS, submitted that, in accordance with diplomatic practice, a reply to that letter was called for. He proposed that the reply might contain, firstly, a polite but firm indication to the State party in question that the matters raised in its letter could best be clarified in its own second periodic report; and, secondly, a reminder that that report was very much overdue.

37. Mr. EL SHAFEI, supported by Mr. WENNERGREN and Miss CHANET, argued that the two issues - each in its own way delicate - should not be confused in the same communication. The matter should be addressed with circumspection and special care should be taken to avoid creating a precedent.

38. Mr. PRADO VALLEJO remarked that the State party itself had not proceeded in very diplomatic fashion. It should be reminded of its tardiness in the matter of reporting.

39. Mrs. KLEIN (Secretary of the Committee) said that the Centre for Human Rights had received a copy of the letter addressed to the Chairman, together with a note verbale reiterating the request that it should be brought to the attention of members of the Committee and further asking for it to be circulated as an official document of the session. The latter action was, however, called for neither by the Committee's rules of procedure nor by its practice.

40. If the Committee agreed, the Centre would acknowledge the note verbale and inform the Permanent Mission of the Democratic People's Republic of Korea that, while the letter had indeed been brought to the attention of members of the Committee, no provision or practice justified its circulation as an official document.

41. Mrs. HIGGINS endorsed that suggestion. For States parties, the proper manner of informing the Committee, and of setting any controversial matters straight, lay through dialogue during the submission and consideration of their reports. She reiterated the view that a reminder of its tardiness in that connection should be addressed to the Democratic People's Republic of Korea.

42. Mr. AGUILAR URBINA and Mr. MYULLERSON supported that view.

43. Mr. WENNERGREN said that he did not favour a reproachful reminder that smacked of tit for tat. Rather, the importance of the topics raised might be acknowledged and the representatives of the Democratic People's Republic of Korea invited to discuss them further with the Committee - the most suitable occasion for that being when that country's own second periodic report was considered.

44. Mr. EL SHAFEI reiterated his opposition to any linkage of the two basic issues. Further, Mr. Wennergren's argument could give the impression that the accusations levelled by one State party at another had in some way been accepted. That could lead the Committee to be accused in turn of taking sides.

45. Miss CHANET said she also continued to oppose any formal linkage of the two issues: to send a special reminder to the Democratic People's Republic of Korea could be interpreted as discriminatory, and also as a precedent. To her mind, what was important was to indicate firmly that there was nothing in the Committee's procedures or practice that permitted the circulation of comments by a State party relating to the consideration of another State party's report, and there was still less reason for doing so when the State making the accusations was itself failing to observe the established reporting procedures.

46. Mr. NDIAYE said that the matter did not seem to him to merit further discussion, especially when there was a grave danger of creating a precedent; North Korea had pronounced on certain statements by South Korea: that was none of the Committee's business. The best response by the Chairman on the Committee's behalf might, in his opinion, be eloquent silence. As far as reporting was concerned, the appropriate and customary reminder could be issued in due course.

47. The CHAIRMAN asked whether the Committee agreed that a reply by the Secretariat, in the form suggested by Mrs. Klein, would be sufficient.

48. It was so decided.

Austria's reservations to article 14 of the Covenant

49. The CHAIRMAN recalled that Austria had asked the Committee to provide it with comments on its reservation to article 14 (5) of the Covenant. The Working Group under article 40 had discussed the issue, but it had not been able to state definitely that the Committee had the competence under the Covenant to make such comments. The Working Group had decided that the Committee could refer to State party reservations in its concluding remarks after the consideration of a report, although the Committee had not, in fact, made any concluding remarks after consideration of Austria's latest report in 1991, since the practice had only been standard since the spring session of 1992.

50. Alternatively, the Committee might address the subject of State party reservations in general comments on specific articles of the Covenant, or in a separate general comment. In case the Committee decided that it was, in fact, competent to prepare a comment on Austria's reservations to article 14, the Working Group had prepared a draft comment, which was before the Committee in a working paper without a symbol.

51. Mrs. HIGGINS said that the Committee should first consider the point of principle involved, namely whether it was competent to comment on States parties' reservations to articles of the Covenant. In her opinion, the Committee was indeed entitled to do so. Under article 40 (4) of the Covenant, the Committee was empowered to study the reports submitted by States parties, which included information about reservations, and make "general comments", a provision which had always been interpreted liberally. Under article 40 (5), States parties were free to submit observations on those comments if they wished. She therefore felt that the Committee was fully competent to provide the guidance which Austria had requested.

52. The Working Group had recommended that the Committee should exercise caution in giving its views on a State party's reservations. However, the Committee had to deal with the criminal law system of States parties when considering their reports, and she could not see that commenting on a State party's legal system in a written reply was any different from making observations or asking questions on the subject during the oral discussion of a report.

53. Mr. NDIAYE said it was for States parties to formulate comments or objections concerning reservations lodged by other States parties. The Committee was not competent to give a legal interpretation of State party legislation, at least not under article 40 of the Covenant; under the first Optional Protocol to the Covenant, it did have the right to interpret State party legislation when drawing up its views, as it had done on France's reservations to the Covenant. If the Committee was asked to comment on reservations during the consideration of country reports, he felt that members could give their individual views, but that the Committee as a whole should not comment.

54. Miss CHANET said that she could see no legal basis in the Covenant for the Committee to comment on State party reservations. Moreover, she felt that the Austrian delegation had been quite aware of that fact, which was why it had put its request orally, rather than in writing. The Committee had always been very careful in its general comments to avoid any implication that it was "interpreting" State party legislation; she felt it was a dangerous precedent for it to act any differently in the instant case.

55. Mr. EL SHAFEI said that only States parties had the right to question the reservations lodged by other States parties. The Committee could inquire about reservations during its consideration of reports, but it should not make comments in writing. There was no precedent for such a practice.

56. Mr. WENNERGREN recalled that the matter had arisen during the Committee's consideration of Austria's report, when Austria had asked whether the Committee could give an assurance that its legislation relevant to article 14 (5) was compatible with the Covenant, thus enabling it to withdraw its reservation. In a way, therefore, the Committee could be said to have begun the debate. The Committee now made general remarks after the consideration of each State party report, when questions such as that asked by Austria might easily be answered. Similar requests might well be made in the future as a result of points made during the concluding remarks. He therefore felt that the Committee should provide Austria with the guidance it had requested.

57. Mr. MYULLERSON said that, under international treaty law, it was for States parties to an instrument to comment on reservations lodged by other States parties: it was not clear what role a supervisory body had to play in that area. He could not accept Mr. Ndiaye's argument that members might comment individually; why should the individual members of the Committee be able to do something that the whole could not?

58. The Working Group's suggestion - that the question of reservations might be addressed in members' concluding remarks after consideration of a State party's report or, alternatively, in general comments - deserved more attention. However, both solutions presupposed that the Committee was in fact competent to comment on State party reservations.

59. Mr. ANDO expressed concern about the possible consequences if the Committee provided the comments requested by Austria. If Austria changed its legislation on the basis of an assurance received from the Committee, it might be considered that the Committee was, at least in part, responsible for the change, which ought to be the sovereign responsibility of the State concerned. It would be a different matter if Austria changed its legislation on the basis of objections put forward by other States parties. He feared that other States parties might then ask for written comments on their legislation, which would present the Committee with a never-ending and ill-defined task.

60. Mr. NDIAYE, answering the points raised by Mr. Myullerson, said that one of the reasons why it was inappropriate for the Committee to comment on State party reservations was the time factor; the Committee would not comment until it had received a State party report, by when the reservations would have been in force for some time. If the experts who had drafted the Covenant had wished to give the Committee the power to comment on State party legislation, they could easily have done so; the Committee did have that power under the first Optional Protocol, but it did not have such authority under the Covenant itself.

61. As for his suggestion that members might comment individually during the consideration of a State party report, he had only meant to say that members already made a wide range of comments in such circumstances, and said exactly what they thought; however, their comments did not carry the same weight as a comment adopted by the Committee as a whole.

62. Mr. PRADO VALLEJO agreed with the Working Group that the Committee had no legal basis under the Covenant for making comments on State party reservations. Oral observations by individual members were quite in order, but the comments requested by Austria were intended to guide it in possible changes in its legislation, which was not a matter for the Committee. If Austria wished to change its own legislation, it had the sovereign right to do so, but the Committee could not tell it what changes to make.

63. Mr. HERNDL said that, in his opinion, the Committee was competent to comment on State party reservations. When considering State party reports, the Committee asked for details about reservations. Sometimes, members even went so far as to call upon State parties to withdraw their reservations to the Covenant, which was tantamount to asking them to change their legislation.

64. The issue had arisen during the consideration of Austria's second periodic report (CCPR/C/51/Add.2) at the forty-third session. When the Austrian representative had been asked about Austria's reservation to article 14 (5), he had said that Austria had entered the reservation merely as a precaution and could envisage withdrawing it if the Committee or any other United Nations body provided Austria with "the necessary assurances" that the

existing legislation was compatible with the Covenant (CCPR/C/SR.1099, para. 68). However, it was clear from the Working Group's deliberations that the law in question was not compatible with the Covenant. Hence the Committee could not provide Austria with the assurances it sought, even if it decided that it were competent to do so. In his opinion, since the Committee could not give the required assurances, it would do better not to make any comment at all.

65. Mrs. HIGGINS said that some members of the Committee seemed to be taking the very conservative view that everything relating to reservations to the Covenant was a matter of State sovereignty and not for the Committee to discuss. However, the Committee had never acted in precisely that way. Although States were at liberty to make such reservations as they wished, the Committee had always tried to understand the reservations and question whether they were desirable for the purpose of implementing the Covenant. Another, less extreme view was that individual members but not the Committee as a whole could make comments on reservations, or that the Committee could do so orally but not in writing, or that the Committee could perhaps make a general comment. She herself shared Mr. Myullerson's opinion that whatever members were entitled to do as individuals the Committee could do as a whole and that expressing a view orally was the same as doing so in writing. Either the Committee was competent to look at a State's reservations, or it was not.

66. Mr. Herndl and Mr. Wennergren had described the circumstances in which the question had arisen and the Committee had been asked to give an assurance that, if the Austrian reservation to article 14 (5) was withdrawn, its legislation would be deemed compatible with the Covenant. There seemed to be some feeling that the Committee should only answer if it could do so in the affirmative. Whether the Austrian representative's remarks constituted a serious request to the Committee was another question.

67. A second, and possibly more important, issue was the enormous, looming general problem of reservations to the Covenant. Many recent ratifications had been accompanied by substantial reservations virtually restricting the scope of the Covenant to the country's domestic legislation. The classic position that reservations to treaties were a matter of State sovereignty did not work for human rights treaties, in which States mutually agreed to give certain rights to individuals. The reality was that, for the most part, States did not recognize their mutuality of interests in the field of human rights and failed to monitor reservations. The Committee should surely not take the conservative view that a State party could make whatever reservations it chose and that the Committee should do nothing. If the Committee did not take up the general question of reservations to the Covenant, no one else would do so.

68. Miss CHANET said she thought the Austrian request, whether serious or not, posed a considerable question regarding the relationship between the Committee and States parties.

69. Turning to the draft comment on Austria's reservations to article 14 in the annex to the Working Group's recommendation, she said that the question of non bis in idem in connection with article 14 (7) would require a very detailed study of the Austrian Code of Criminal Procedure. The reservation to

article 14 (5) posed the more easily identifiable problem of the possibility of review by a higher tribunal, but even there the Committee could not give a considered opinion without engaging in a very difficult exercise.

70. Mr. PRADO VALLEJO agreed with Mrs. Higgins that a point had been reached in regard to State party reservations at which the Committee must make a statement. It was accepted that reservations to treaties were a matter of State sovereignty. At the same time, the Vienna Convention on the Law of Treaties established the principle that a reservation could not be incompatible with the object and purpose of the treaty. States could make the Covenant completely ineffective through their reservations. As the Committee knew, the United States, for example, had entered dozens of reservations to the Covenant. Various human rights organizations in the United States had criticized the Government's approach as making the Covenant virtually inoperative.

71. It might be appropriate, therefore, to consider drafting a general comment on reservations immediately. The Committee would undoubtedly have to consider the question at some time. In the inter-American system, the matter was already under examination. The Inter-American Court of Human Rights was studying the question of reservations to human rights agreements that made them inoperative.

72. In the case of the Austrian request, the Committee could do nothing without studying not merely Austria's Criminal Code but its legislation in general. Only the Austrian Government could know whether something that was incompatible with the Covenant could be amended. The Committee was clearly not in a position to say.

73. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) said that the Committee needed to distinguish between the general problem and the Austrian request. He shared the view that the Committee was entirely competent to discuss the reservations of States parties. It was its task to watch over the application of the Covenant as an international treaty within the framework of international law in general. It was being faced with reservations by States parties that ran counter to the general rule posed by the Vienna Convention, as referred to by Mr. Prado Vallejo.

74. That was not, however, the question that arose in the Austrian case. Rather, the Committee was being asked to examine a country's reservations and its legislation and to pronounce on whether, if they were withdrawn, the legislation itself would be contrary to article 14 of the Covenant or not. However, the Committee was not empowered to examine national legislation in the abstract. Furthermore, it did not possess the necessary expertise. The question therefore was hypothetical and the Committee should not answer it. He was doubtful, moreover, that the suggestion that the Committee should make a pronouncement had been made seriously by the Austrian delegation.

75. Instead, the Committee needed to face the problem raised by Mrs. Higgins, and the sooner the better. It should start preparing a general comment on reservations, in particular reservations that might be contrary to the object and purpose of the Covenant, thus undermining its whole system of protection, and therefore contrary to international law in general.

76. In the general comment, the Committee could envisage all the situations in which reservations might be made, with particular attention to non-derogable rights, and thus prepare itself to deal with future situations on the basis of a general opinion. Governments could then be recommended, after the Committee's consideration of their reports, to withdraw reservations. He noted that the inter-American system was already addressing the problem of reservations. To sum up, the Committee could, therefore, usefully decide to initiate the preparation of a general comment and, in the particular case of the Austrian request, could say, that it found no basis on which to offer an opinion that would involve interpreting Austrian domestic legislation in an abstract way.

77. Mr. EL SHAFEI said the specific point at issue was whether the Committee could give an assurance that following the withdrawal of Austria's reservations, certain provisions of its Code of Criminal Procedure would not be incompatible with the Covenant. The Working Group had prepared a draft reply, but the Committee would need to examine the Austrian Code of Criminal Procedure before going further. If the Committee were to decide that it had the time and expertise to do so, that would be the first action to take. It would then be in a position to assure the Austrian Government that there would be nothing amiss with its criminal procedure if the reservations to article 14 (5) and (7) were withdrawn.

78. Mr. MYULLERSON said that the Committee as such could not give any such assurance. Its composition might change and the new members might take a different view of the matter. If it was generally agreed that the Committee could not give an assurance, there was no need to give any answer to Austria. His feeling was that the matter had been raised on an impromptu basis during a lively discussion and did not constitute an official request.

79. He supported the proposal that the Committee should prepare a general comment on reservations to the Covenant after research into the topic. That would not involve naming particular States. The main purpose would be to determine whether reservations were such as to be incompatible with the object and purpose of the Covenant.

80. Mr. WENNERGREN said that the Austrain delegation had asked for an assurance. Could the Committee not just say briefly that it did not find itself in a position to give such an assurance?

81. The CHAIRMAN said that there were two separate issues before the Committee. The easier one was whether the Committee should decide to start considering the preparation of a general comment on reservations. He had heard no objection to the suggestion that it should. If it was agreeable to the Committee, a decision could be taken to start such preparation, and possibly a member of the Committee might be appointed to prepare an initial draft.

82. It was so decided.

83. The CHAIRMAN said that the second issue, the Austrian request, was more difficult. The Committee could decide to take no action. According to this recollection, the matter had arisen following comments by Committee members during the consideration of the Austrian report (CCPR/C/SR.1099). Some members had suggested then that, since in their view Austrian legislation was in line with the Covenant, the reservation to article 14 (5) was not necessary. The Austrian representative had said that, if that was indeed the case, Austria was ready to withdraw the reservation, provided the Committee clearly stated that it was unnecessary. The Working Group had looked into the matter and, after studying the Austrian legislation, had reached the conclusion that the reservation was necessary. Otherwise, Austrian criminal procedure would be in contravention of article 14 of the Covenant. The Committee had reserved its answer at the time but it should now address the point, as the Austrian Government was waiting for a response. If the members of the Committee shared the Working Group's conclusion, a letter could be sent to the Austrian Government saying that the Committee was unable to give an assurance that retaining the legislation as it stood would not contravene the Covenant.

84. Mrs. HIGGINS said that she would welcome a decision to take some action, if the question of the Committee's competence was settled. However, what action should be taken could not be decided, as there was no general agreement among members of the Committee. There were two elements to the request: the question of non bis in idem pure and simple, and the question of the upgrading of the sentence. Both would have to be closely studied and the answer might not be the same in both cases.

85. Mr. AGUILAR URBINA said that the Committee was obliged to keep up the dialogue with Austria and must answer the specific request for an assurance. On the question of a general comment, he agreed with Mrs. Higgins that the Committee could not take a position that would hinder it from carrying out its duties under the Covenant and reacting to reservations which would prevent the provisions of the Covenant, as they stood, from being applied. He noted that he had prepared the second part of the draft comment but had been obliged to do it during a meeting of the Working Group without having the material to hand.

86. The CHAIRMAN said that the Committee could perhaps revert to the matter later in the session, although he was not sure when would be an appropriate time. For the moment, the Committee had reached no decision on the Austrian request.

87. Mr. PRADO VALLEJO said that a number of members had pointed out that more material would be needed for a proper consideration. That material could not be available at the current session and, in his view, the matter should be left over to the Committee's next session.

88. Mr. DIMITRIJEVIC (Chairman/Rapporteur of the Working Group under Article 40) said it looked as though the matter would have to be postponed to the next session. The Working Group would have prepared a draft by then, so that the response would not have to be drafted in the Committee. He agreed that it was necessary to reply in some form. However, to prepare a reply stating that the legislation was or was not in accordance with the Covenant

would create a dangerous precedent that might lead to many Governments seeking such an opinion from the Committee. The Working Group might prepare, as one of the variants, a text to the effect that the Committee had studied the matter, but was unfortunately unable to pronounce on the compatibility of the Austrian legislation with the Covenant in an abstract and hypothetical manner. That would be a reply to the request and, at the same time, a polite way of refusing to answer.

89. The CHAIRMAN suggested that the matter should be referred to the Working Group, which would take into account the proposal of Mr. Dimitrijevic.

90. It was so decided.

The meeting rose at 6 p.m.